

(c) If the owner of a volume of renewable fuel that is spilled and reported establishes that no RINs were generated to represent the volume, then no gallon-RINs shall be retired.

(d) A RIN that is retired under paragraph (b) of this section:

(1) Must be reported as a retired RIN in the applicable reports under § 80.1152.

(2) May not be transferred to another party or used by any obligated party to demonstrate compliance with the party's Renewable Volume Obligation.

[72 FR 23995, May 1, 2007]

EFFECTIVE DATE NOTE: At 72 FR 23995, May 1, 2007, § 80.1132 was added, effective Sept. 1, 2007.

**§§ 80.1133–80.1140 [Reserved]**

**§ 80.1141 Small refinery exemption.**

(a)(1) Gasoline produced at a refinery by a refiner, or foreign refiner (as defined at § 80.1165(a)), is exempt from the renewable fuel standards of § 80.1105 if that refinery meets the definition of a small refinery under § 80.1101(g) for calendar year 20460.

(2) This exemption shall apply through December 31, 2010, unless a refiner chooses to waive this exemption (as described in paragraph (f) of this section), or the exemption is extended (as described in paragraph (e) of this section).

(3) For the purposes of this section, the term “refiner” shall include foreign refiners.

(b)(1) The small refinery exemption is effective immediately, except as specified in paragraph (b)(4) of this section.

(2) A refiner owning a small refinery must submit a verification letter to EPA containing all of the following information:

(i) The annual average aggregate daily crude oil throughput for the period January 1, 2004, through December 31, 2004 (as determined by dividing the aggregate throughput for the calendar year by the number 365).

(ii) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the letter is true to the best of his/her knowledge, and that the company owned the refinery as of January 1, 2004.

(iii) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.

(3) Verification letters must be submitted by August 31, 2007, to one of the addresses listed in paragraph (h) of this section.

(4) For foreign refiners the small refinery exemption shall be effective upon approval, by EPA, of a small refinery application. The application must contain all of the elements required for small refinery verification letters (as specified in paragraph (b)(2) of this section), must satisfy the provisions of § 80.1165(f) through (h) and (o), and must be submitted by August 31, 2007 to one of the addresses listed in paragraph (h) of this section.

(c) If EPA finds that a refiner provided false or inaccurate information regarding a refinery's crude throughput (pursuant to paragraph (b)(2)(i) of this section) in its small refinery verification letter, the exemption will be void as of the effective date of these regulations.

(d) If a refiner is complying on an aggregate basis for multiple refineries, any such refiner may exclude from the calculation of its Renewable Volume Obligation (under § 80.1107(a)) gasoline from any refinery receiving the small refinery exemption under paragraph (a) of this section.

(e)(1) The exemption period in paragraph (a) of this section shall be extended by the Administrator for a period of not less than two additional years if a study by the Secretary of Energy determines that compliance with the requirements of this subpart would impose a disproportionate economic hardship on the small refinery.

(i) A refiner may at any time petition the Administrator for an extension of its small refinery exemption under paragraph (a) of this section for the reason of disproportionate economic hardship.

(ii) A petition for an extension of the small refinery exemption must specify the factors that demonstrate a disproportionate economic hardship and must provide a detailed discussion regarding the inability of the refinery to produce gasoline meeting the requirements of § 80.1105 and the date the refiner anticipates that compliance with

the requirements can be achieved at the small refinery.

(2) The Administrator shall act on such a petition not later than 90 days after the date of receipt of the petition.

(f) At any time, a refiner with an approved small refinery exemption under paragraph (a) of this section may waive that exemption upon notification to EPA.

(1) A refiner's notice to EPA that it intends to waive its small refinery exemption must be received by November 1 to be effective in the next compliance year.

(2) The waiver will be effective beginning on January 1 of the following calendar year, at which point the gasoline produced at that refinery will be subject to the renewable fuels standard of § 80.1105.

(3) The waiver must be sent to EPA at one of the addresses listed in paragraph (h) of this section.

(g) A refiner that acquires a refinery from either an approved small refiner (as defined under § 80.1142(a)) or another refiner with an approved small refinery exemption under paragraph (a) of this section shall notify EPA in writing no later than 20 days following the acquisition.

(h) Verification letters under paragraph (b) of this section, petitions for small refinery hardship extensions under paragraph (e) of this section, and small refinery exemption waivers under paragraph (f) of this section shall be sent to one of the following addresses:

(1) *For U.S. mail:* U.S. EPA—Attn: RFS Program, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) *For overnight or courier services:* U.S. EPA, Attn: RFS Program, 6406J, 1310 L Street, NW., 6th floor, Washington, DC 20005.

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**§ 80.1142 What are the provisions for small refiners under the RFS program?**

(a) (1) Gasoline produced by a refiner, or foreign refiner (as defined at § 80.1165(a)), is exempt from the renewable fuel standards of § 80.1105 if the re-

finer or foreign refiner does not meet the definition of a small refinery under § 80.1101(g) but meets all of the following criteria:

(i) The refiner produced gasoline at its refineries by processing crude oil through refinery processing units from January 1, 2004 through December 31, 2004.

(ii) The refiner employed an average of no more than 1,500 people, based on the average number of employees for all pay periods for calendar year 2004 for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners.

(iii) The refiner had a corporate-average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2004.

(2) The small refiner exemption shall apply through December 31, 2010, unless a refiner chooses to waive the exemption (pursuant to paragraph (h) of this section) prior to that date.

(3) For the purposes of this section, the term "refiner" shall include foreign refiners.

(b) The small refiner exemption is effective immediately, except as provided in paragraph (d) of this section. Refiners who qualify for the small refiner exemption under paragraph (a) of this section must submit a verification letter (and any other relevant information) to EPA containing all of the following information for the refiner and for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners:

(1)(i) A listing of the name and address of each company location where any employee worked for the period January 1, 2004 through December 31, 2004.

(ii) The average number of employees at each location based on the number of employees for each pay period for the period January 1, 2004 through December 31, 2004.

(iii) The type of business activities carried out at each location.

(iv) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.